

MINUTES
Independence Planning Commission/Board of Zoning Appeals
Tuesday, August 2, 2016
Veterans Room, Memorial Hall 5:30 p.m.

Call to Order

Planning Commissioners Present

Steve McBride, Mary Schmidt, Darnell Lawrie, Tony Holmes, Mary Jo Dancer*, Philip Umlauf and Jim Hardy.

Planning Commissioners Absent

Nick McCollam* and John Faller

*Outside Appointments are not on the Board of Zoning Appeals

Staff Present

Kelly Passauer, Assistant City Manager/Zoning Administrator

Visitors Present

Robert Miller, Margaret Botts, Jack Harris, Nelda Harris, Roy Allen and Ruth Allen

a. Consider approving minutes of the July 5, 2016 meeting.

Philip Umlauf made a motion to approve the minutes from the July 5, 2016 meeting. Tony Holmes seconded the motion to approve the minutes. Motion carried 7-0.

Board of Zoning Appeals

b. Consider a request for variance(s) to encroach on the setback(s) in an R-3 zoned district at 309 S. 6th and 315 S. 6th.

Robert Miller explained that he wanted to construct a carport that would encroach on the side yard setback. He further explained that the property line had been modified and the modification created an encroachment for an existing garage.

Staff provided the following staff report to the board in written form prior to the meeting:

Overview of Variance Requested

The Board of Zoning Appeals has received an application from Robert Miller to grant a variance from the setback regulations as provided for in the zoning ordinance.

Review of Request

His request is to encroach upon the side yard setback to construct a carport. The applicant is requesting to encroach on the 8' side yard setback 6', thus reducing the side yard setback to 2' at 315 S. 6th Street. Because the property line has been moved, this will create a new encroachment with an existing garage at 309 S. 6th, therefore the applicant is requesting to encroach 2' on the 8' setback, thus reducing the side yard setback to 6' at 309 S. 6th.

Board of Zoning Appeals Considerations

In considering the providing of a variance we wish to provide the following information:

a That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district, and is not created by

any action or actions of the property owner or the applicant; The only unique situation is the property owner owns the adjoining property.

b. That the granting of the permit for the variance will not adversely affect the rights of the adjacent property owners or residents; It is not believed that this encroachment will create any adverse effects to adjacent property owners, since the applicant owns both properties.

c. That the strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application; The hardship would consist of not allowing the property owner to enlarge a carport.

d. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; It does not appear that the variance will affect public health, safety or general welfare.

e. That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations City staff feels it is not opposed to the general spirit and intent of the zoning regulations.

Staff Recommendation

Staff recommends approving the variance as follows reducing the side yard setback from 8' to 2' at 315 S. 6th Street; and reducing the side yard setback from 8' to 5' at 309 S. 6th.

A motion was made by Steve McBride and seconded by Darnell Lawrie to approve the variance as requested and recommended by staff reducing the side yard setback from 8' to 2' at 315 S. 6th Street; and reducing the side yard setback from 8' to 5' at 309 S. 6th.

The motion carried 6-0.

Planning Commission

c. Consider a request for a conditional use permit for a daycare at 1318 W. Hickory Street.

The applicant had advised City staff that they were prescheduled to be out of town and if any questions came up they would request that the hearing be adjourned to the next meeting. Jack and Nelda Harris of 1319 W. Beech Street indicated that they had a pool on their property behind this location. They indicated that they had a fence, however, the applicant does not have a good fence. City staff advised that the conditional use permit would require a fence if the daycare had 7 or more children, at which point the applicant asked for one year to get the fence installed. Jack and Nelda Harris, as well as neighbor Margaret Botts of 1322 W. Hickory Street were concerned about the having a fence now regardless of how many children were being watched there. Neighbors Roy and Ruth Allen at 1123 N. 19th Place indicated that they did not have any issues with the request.

Staff provided the following staff report to the board in written form prior to the meeting:

Summary

The Planning and Zoning Commission has received a request for a conditional use permit from Jamie Miller and Austin Fine for a daycare at 1318 W. Hickory Street.

City Zoning Code Section 403.0 defines a day care facility as follows:

Day care facility: Any place, home or institution which receives four or more children under the age of 18 years for any part of the 24-hour day for compensation; provided, however, this definition shall not include public and private schools organized, operated or approved under the laws of the state, custody of children fixed by a court of competent jurisdiction, children related by blood or marriage, to the day care provider, caring for children within an institutional building while their parents or legal guardians are attending services, meetings or classes or engaged in church activities.

Appendix "A" of the Zoning Ordinance allows a day care facility as a permitted use in the C-1 and C-2 districts. Day care facilities are allowed as a conditional use in the A-1, R-1, R-2, R-3, R-4, R-5, O/P and C-3 zones. Day care facilities are not permitted in the M-1 and M-2 zones.

Conditional Use Permit

The zoning ordinance in section 901.1 (page 87) describes the purpose of a conditional use as:

"...those types of uses which are considered by the City to be essentially desirable, necessary or convenient to the community but which by their nature or in their operation have

- 1) a tendency to generate excessive traffic,*
- 2) a potential for attracting a large number of persons to the area of the use thus creating noise or other pollutants,*
- 3) a detrimental effect on the value of potential development of other properties in the neighborhood, or*
- 4) an extraordinary potential for accidents or danger to the public health or safety.*

Such conditional uses cannot be allowed to locate as a 'right' on any parcel of land within certain districts without consideration of existing conditions at the proposed locations and of properties neighboring the specific site considered, nor without adequate and sufficient safeguards, when necessary, to lessen the impact of adverse effects."

Staff Report

Article X of the Zoning Ordinance addresses special provisions applying to miscellaneous conditional uses:

1001.0. Purpose.

1001.1. Purpose: In granting a conditional use, the city may impose such conditions, safeguards and restrictions upon the premises benefited by the conditional use as may be necessary to reduce or minimize any potentially injurious effect of such conditional uses upon other property in the neighborhood, and to carry out the general purpose and intent of these regulations. Any lessening or subverting of those limitations and requirements constitutes a

variance and must be treated accordingly. The following additional conditions shall be a requirement for the approval of the following conditional uses.

Section 610 and 1003 address the minimum provisions the Planning Commission should consider when authorizing a day-care facility in a residential district:

610.0. Family day care homes.

610.1. Definition: A "family day care home" shall be defined as any facility for the care of four or more children, but no more than ten children, including the homeowner's or resident's children, on a professional basis, and subject to state licensing, which is operated out of the residence in which the owner resides.

610.2 [Home occupation license:] Each family day care home must obtain a home occupation license and comply with the restrictions, limitations and requirements contained in 605.0 except as modified herein:

- a. Said facility shall be allowed one sign, not to exceed 18 inches by 36 inches in dimension, which shall be attached to the house.*
- b. Outdoor storage of materials shall be permitted insofar as such materials or equipment are utilized as part of the day care operation.*
- c. The primary resident of the dwelling must operate the facility, who need not be an owner of the dwelling.*
- d. Said facility shall be exempt from all off-street parking requirements included in 701.0.*
- e. Children at play on the exterior of the house shall not be considered visible evidence of the business as provided by section 605.1 f.*

610.3. Special conditions:

- a. No day care home may operate in an apartment or duplex.*
- b. Each applicant for a home occupation license under this section shall be licensed or registered by the State of Kansas prior to receiving such home occupation license.*
- c. Any family day care home or facility shall be operated in a manner that will not adversely affect other properties and uses in the area.*

1003.0. Day care facilities for more than four children.

1003.1 Special conditions: Day care facilities for more than four children shall meet the following provisions when authorized as a conditional use in any residential district:

- a. City, county and state standards: All day care facilities shall be licensed by the state and shall meet all city, county and state health department requirements pertaining to facilities, equipment and other features.*
- b. Loading zone: A loading zone capable of accommodating one car for every ten children shall be provided in addition to the required parking area in order to provide for easy pickup and discharge of passengers.*

- c. *Operation: Any day care facility shall be operated in a manner that will not adversely affect other properties and uses in the area*
- d. *Screening required: Any day care facility located in a building other than a residential dwelling or any residential dwelling used for a day care facility for seven or more children shall provide a visual screen along all property lines abutting any residential use.*

In addition to the above special conditions required by the zoning code, the Planning Commission has the authority to place additional conditions on the site that they deem necessary to protect the best interests of the City, the surrounding property and to achieve the objectives of the ordinance.

City staff has reviewed the sites regarding the above special conditions and wishes to provide the following:

- a. *City, county and state standards:* The applicant would be required to meet all City, county and state standards which includes receiving a State daycare license and a City occupation license.
- b. *Loading zone:* One off-street loading zone for every ten children is required by code. However, if the daycare facility is only licensed for nine children or less an off-street loading zone is not required.
- c. *Operation:* City staff is not aware of any issues in the operation of this day care that would adversely affect adjoining property owners.
- d. *Screening required:* Screening is only required for seven or more children, if this facility is licensed for six children or less then no screening is required.

In considering those types of uses which may be desirable, necessary or convenient to the community, the Commission should review and make recommendations based in part on 901.1.

Additionally, the decision of the Planning Commission to recommend approval or denial of the proposed conditional use shall be based on the following criteria (902.2):

- a. *The proposed conditional use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitation*
- b. *The proposed conditional use at the specified location will contribute to and promote the welfare or convenience of the public*
- c. *The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.*
- d. *The location and size of the conditional use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the conditional use will not dominate the immediate use of the neighboring property in accordance with the applicable zoning district regulations..In determining whether the conditional use will so*

dominate the immediate neighborhood, consideration shall be given to

- 1. The location, nature and height of buildings, structures, walls and fences on the site, and*
 - 2. The nature and extent of landscaping and screening on the site*
- e. Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations (article VII).*
- f. Adequate utility, drainage, and other such necessary facilities have been or will be provided.*
- g. Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.*

Action by the Planning Commission

Any recommendations regarding a conditional use permit for the subject properties shall be based on Section 902.2 previously outlined in this report. After considering any public comments the Planning Commission may either approve or deny the requests. If the requests are approved the applicants must be required to meet the special conditions required for a day care facility within a specified period of time in addition to any other conditions the Planning Commission wishes to require. Following your action, the application and your recommendation will be forwarded to the City Commission at which time they will have 30 days to adopt, modify or deny the Planning Commission's recommendation.

Staff Recommendation

City staff recommends granting the conditional use permit with the following conditions:

1. The applicant must meet all the "special conditions" set forth in Section 1003.1 a, b, c and d of the Zoning Code as follows:
 - a. City, county and state standards: All day care facilities shall be licensed by the state and shall meet all city, county and state health department requirements pertaining to facilities, equipment and other features*
 - b. Loading zone: A "hard surfaced" loading zone capable of accommodating one car for every ten children shall be provided within one year in addition to the required parking area in order to provide for easy pickup and discharge of passengers.*
 - c. Operation: Any day care facility shall be operated in a manner that will not adversely affect other properties and uses in the area*
 - d. Screening required: Any day care facility located in a building other than a residential dwelling or any residential dwelling used for a day care facility for seven or more children shall provide a visual screen along all property lines abutting any residential use. The applicant will have one year to meet this requirement.*
2. The conditional use permit is not transferable to another property owner or to another location.

3. The applicant must be in compliance with all City codes and must continue to be in compliance with all City codes. This would include the requirement to acquire a City occupation license which must be renewed annually.

If any of the above conditions are not met the conditional use permit will no longer be valid. The basis of staff's recommendation is that granting the conditional use permit is consistent with the criteria "a through g" of Section 902.2 of the zoning code.

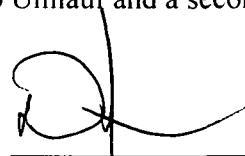
A motion was made by Tony Holmes and seconded by Darnell Lawrie to adjourn the public hearing to September 6, 2016 at 5:30 PM so that the applicant could address the neighbor concerns. The motion carried 7-0.

d. None.

Adjournment

The meeting was adjourned with a motion by Philip Umlauf and a second by Jim Hardy. The motion carried 7-0.


Mary Schmidt, Chair


Darnell Lawrie, Secretary